



147548

Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Whittaker Electronic Systems
File: B-246732.2
Date: September 10, 1992

J.C. Cannady for the protester,
Jay P. Urwitz, Esq., Hale and Dorr, for GenRad, Inc., and
Richard L. Moorhouse, Esq., Dunnells, Duvall & Porter, for
Racal-Dana Instruments, Inc., interested parties.
John Bennett, Esq., United States Marine Corps, for the
agency.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency reasonably found protester's best and final offer (BAFO) technically unacceptable where protester's BAFO failed to provide the requested detailed technical information, which was necessary to establish the protester's compliance with the solicitation's design and performance specifications.

DECISION

Whittaker Electronic Systems protests the rejection of proposal as technically unacceptable under request for proposals (RFP) No. M67854-90-R-0090, issued by the United States Marine Corps for testheads for the Marine Corps Automatic Test Equipment System (MCATES).

We deny the protest.

The MCATES specifies computer software/hardware development standards/guidelines for development of Automatic Test Equipment (ATE) used by the Marine Corps to diagnose electronic components of weapons and communication systems. One type of Marine Corps ATE is the AN/USM-631 Automatic Hybrid Test Station (AHTS), which analyzes printed circuit cards. The AHTS has two major components or modules: a controller and a testhead. This procurement is for the testhead. The testhead contains the AHTS' switching subsystem, digital test subsystem, and the Unit Under Test interface panel (i.e., a place to attach/connect printed cards to the AHTS for testing).

The RFP, as issued on November 28, 1990, solicited firm, fixed-price offers for commercial off-the-shelf (COTS) testheads, with associated first articles, training, and technical data, and options for additional quantities and spare parts. The RFP included a statement of work and a purchase description (PD) that described, in terms of design and functional specifications, testhead equipment characteristics considered essential to meet the government's minimum needs.

The RFP stated that a non-developmental effort was anticipated, but that if hardware or software modification and/or development was required it would have to be done in accordance with military specification MIL-STD-1521B, the statement of work, and the PD. The RFP, as amended, provided that technical proposals would be evaluated against the RFP's technical requirements (i.e., the statement of work and PD) and the qualifications of proposed key personnel would be considered. The solicitation's technical evaluation criteria consisted of six equally valued factors:

1. Responses to Statement of Work
2. Responses to PD
3. Specific Responses to [specifications at patch panel--including timing characteristics, digital probe, and switching requirements] of the PD
4. Specific Responses to [requirement for a test pattern generator] of the PD
5. Specific Responses to [fault isolation algorithms for use with probe software] of the PD
6. Listing of Key Personnel

The RFP instructed offerors to submit technical proposals "so specifically detailed and complete as to clearly demonstrate that the offeror has a thorough understanding of this requirement, and is capable of producing the hardware, software and supporting documentation required." The RFP also specifically advised offerors that "[t]he [g]overnment must be informed of how the task will be accomplished."

Offerors also were advised by the RFP that a single rating of unacceptable on any factor will constitute an unacceptable rating for the entire proposal. Under this scheme, only offerors with "acceptable" technical proposals would be afforded an opportunity to submit equipment for Operational Capability Demonstration (OCD) testing of the

testheads, consisting of Class I (Critical)¹ and Class II (Non-Critical)² tests. Successful OCD completion was a prerequisite to the agency requesting an offeror's best and final offer (BAFO); however, offerors were advised (Amendment No. 0001, Answer to Question 63) that:

"Failure of any or all of the Class II tests will not make a testhead unacceptable, provided that the contractor has sufficiently documented in the proposal how the testhead will be changed to be fully compliant for those failures."

This advice was incorporated into the RFP (Amendment No. 0009) as:

"The failure of Class II tests will not mean the offeror has failed the OCD (i.e., noncompliant) unless the offeror has not previously identified the area of the test failure in its proposal and provided an acceptable explanation in its proposal of how the testhead will be modified in order to be compliant."

Thus, under the OCD, proposals offering equipment that failed a Class I test would be summarily rejected as technically unacceptable, while failure of a Class II test was without consequence, if the offeror had identified the particular Class II problem area in its proposal "and provided an acceptable explanation . . . of how the testhead will be modified in order to be compliant." A proposal offering equipment that both failed Class II testing and lacked the required identification/explanation of the

¹Class I tests are "those tests that represent minimum candidate testhead performance attributes that must be available at the time of the OCD."

²Class II tests are:

"[T]hose tests representing candidate testhead performance attributes that will ultimately be required in the awarded contract but that are not considered critical in the verification of minimum operational capabilities of candidate testheads during the OCD. Failures of Class II tests will provide an indicator to the Marine Corps as to the level of the candidate testhead's compliance with the specified requirements and how much additional work may be required to enhance the off-the-shelf item to meet the full set of requirements."

Class II problem area was technically unacceptable and subject to rejection.

Award under the RFP was to be made to the lowest priced, technically acceptable offeror able to pass OCD testing.

The agency received four proposals by the March 7, 1991, initial closing date. After various amendments, the agency received revised proposals on May 16 and July 15. At this stage, the agency found all four offerors to be in the competitive range and opened written discussions on July 25. Each offeror received a list of detailed technical questions concerning its proposed testhead--Whittaker was asked 177 questions. Among other things, the questions raised issues and requested information on Whittaker's base unit, its digital probe and its proposed use of COTS and other switching boards as part of the testhead. The agency met with the offerors in early August to ensure that they had understood the agency's technical questions, issued two amendments and requested BAFOs by September 3.

The agency received BAFOs from all four offerors. Following the technical evaluation, Whittaker's proposal was rejected on October 11 as technically unacceptable, basically because of agency concerns about Whittaker's proposed equipment enclosure/cabinet. Whittaker immediately sought agency reconsideration, filed an agency-level protest on October 22, that was denied November 15, and filed a protest with our Office on November 20. During the pendency of Whittaker's agency-level protest, the three remaining technically acceptable offerors underwent OCD testing (from October 28 to November 8) with the result (announced November 26) that two offerors passed and one was eliminated from the competition. At this point, the agency elected on December 13 to take corrective action reinstating Whittaker in the competitive range. This rendered Whittaker's protest to our office academic and that protest was dismissed.

On February 7, 1992, the agency issued Amendment No. 0009 requesting revised technical proposals, and provided Whittaker with a list of 15 questions based on Whittaker's September 3, 1991, BAFO submission. Two of the questions (Questions 10 and 12) returned to the need for detailed information concerning Whittaker's COTS base unit³ and COTS

³By question 10 the agency requested detailed information showing:

"[T]he current capabilities and specification,
both electrical and mechanical, of the unit . . .
and a comprehensive list of changes and

(continued...)

switching boards⁴ that the agency had raised in its July 25, 1991, discussions with Whittaker.

Whittaker timely submitted most⁵ of its third revised proposal before the March 13 closing date. This proposal responded to the agency's 15 questions and contained a new section, in which Whittaker delineated the Class II OCD tests that Whittaker's testhead could not perform.⁶

The agency found Whittaker's proposal technically unacceptable principally because Whittaker had not provided the requested specific detailed technical information regarding the nature of Whittaker's proposed equipment modifications to Whittaker's testhead cooling system (Question 4 of 15), Whittaker's base unit (Question 10 of 15), Whittaker's digital tester subsystem (Question 11 of 15), and Whittaker's switching boards (Question 12 of 15). Instead Whittaker essentially provided blanket statements of compliance without specifying in the requested detail the nature of the equipment modifications to COTS equipment. The agency also found that Whittaker had failed to adequately

¹(...continued)

modifications that will be made to the commercial version in order to make it meet the requirements including detailed drawings and documentation showing the type of modifications, complexity, and schedule for modifying the commercial unit . . . include . . . modification for both hardware and software."

⁴In question 12, the agency advised Whittaker that its proposal had provided information for a complete switching subsystem able to use a wide variety of different switching boards, but did not list any of the switching boards in its BAFO. The agency therefore sought:

"[C]omplete documentation as to the actual type of switching that is proposed for the . . . testhead, as stated in . . . BAFO . . . including any and all commercial documentation for those items being provided that are COTS in addition to the [Whittaker] designed switching components."

⁵Whittaker erroneously omitted 2 pages of its submission. On March 26, the agency refused to consider the missing pages.

⁶Although the RFP as amended had required this information to be identified, Whittaker indicates that the revised proposal was the first time that Whittaker indicated that it would not meet some Class II tests.

explain how it would modify its equipment to pass those Class II OCD tests that Whittaker admitted it could not currently pass.

Whittaker protests that its proposal should have been found acceptable. Whittaker asserts that its testhead could pass all Class I OCD tests and that it successfully answered 11 of the 15 technical questions posed by the agency, and there is no validity to the reasons advanced by the agency for determining Whittaker's proposal unacceptable. Specifically, Whittaker notes that the agency admits that its unacceptable answer to the Question 4, which sought detailed information on Whittaker's testhead cooling system, was susceptible to being made acceptable. Concerning Whittaker's responses to Questions 10, 11, and 12, which the agency designated technically unacceptable, Whittaker urges that (1) its base unit is COTS with "minor re-packaging of the COTS subassemblies"; (2) its digital tester subsystem uses a revised mechanical layout of an existing board layout, a repackaging that does not alter design or function of the unit; and (3) it provided the agency with a list of switch elements and quantities as well as a description of each model type.

Whittaker characterizes the nonconformances with regard to the Class II OCD tests as concerning mainly packaging issues and argues that the agency has not provided any specific reasons for considering Whittaker's proposal informationally deficient other than reasons that show a possible lack of understanding by the evaluators. Whittaker finally contends that it was surprised by the reasons advanced for the agency's rejection of its proposal, effectively arguing that it had no reason to suspect that any deficiencies existed in its proposal because Whittaker had addressed 177 questions in September 1991 and the agency only advanced one area of technical noncompliance (the questionable enclosure/cabinet) in its first (October 1991) rejection of Whittaker's technical proposal.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ 381. In reviewing an agency's technical evaluation, we will not reevaluate the proposal, but instead will examine the agency's evaluation to ensure that it was reasonable and not in violation of the procurement laws and regulations. Information Sys. & Networks Corp., 69 Comp. Gen. 284 (1990), 90-1 CPD ¶ 203; Tichenor & Eiche, B-228325, Dec. 28, 1987, 87-2 CPD ¶ 631. The offeror has the burden of submitting adequately written proposals and proposal revisions for the

agency to evaluate, IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380; Complere, Inc., B-227832, Sept. 15, 1987, 87-2 CPD ¶ 254, and where a proposal fails to include technical information that is called for by the solicitation that is necessary to establish compliance with the specifications, there is a reasonable basis to find the proposal technically unacceptable. Inter-Continental Equip., Inc., B-224244, Feb. 5, 1987, 87-1 CPD ¶ 122. A blanket offer of compliance by an offeror is not an adequate substitute for detailed and complete technical information in a proposal establishing that what the firm proposes will meet the government's needs. Dept. of the Air Force--Recon. of Protest filed by Motorola, Inc., B-222181.2, Nov. 10, 1986, 86-2 CPD ¶ 542.

The agency report elaborates at length on Whittaker's major deficiencies--its proposal's failure to both provide sufficient information to evaluate the responses to Questions 4, 10, 11 and 12, and to explain how Whittaker would modify its equipment to cure its current inability to pass the Class II OCD tests. Whittaker's position is that these are minor matters that could have been readily resolved had it been advised of the agency's concerns. We have reviewed Whittaker's arguments, its proposal and BAFO, the evaluators' comments, and the agency report, and discern no basis for finding the evaluation of Whittaker's proposal unfair or unreasonable; to the contrary, the record shows that the agency performed a reasonable technical evaluation consistent with the evaluation criteria and adequately advised Whittaker of its concerns.

From the receipt of Whittaker's initial proposal, the evaluators were concerned that Whittaker's proposal was founded on a collection of COTS components that Whittaker planned to integrate into a base unit/testhead instead of a modification of an existing COTS testhead as the RFP anticipated. The evaluators reasonably interpreted Whittaker's proposal as indicating that the Whittaker COTS base unit was an COTS ASIC (application specific integrated circuit) chip tester that lacked the ability to meet the RFP's digital requirements, such as the requirement for a digital probe. The evaluators therefore concluded that Whittaker's offered testhead was based on an integration of COTS components that Whittaker had never previously integrated in a testhead configuration; in other words, Whittaker's proposed testhead was not really a modification of a COTS testhead. A primary purpose of the agency's numerous requests for information from Whittaker was to resolve these concerns.

From our review, it appears that the agency's concerns about the developmental or COTS status of Whittaker's testhead were well founded. An offeror with an existing COTS testhead should be able to describe in detail any proposed

modifications to the testhead components and the manner in which they would be carried out. This was information that was repeatedly requested from Whittaker; however, our review of the record confirms that Whittaker did not provide the requested details as to what modifications were to be made to the COTS base unit and switching unit or information on exactly how they would be accomplished. Under the circumstances, Whittaker assumed the risk that the agency would draw an adverse inference from Whittaker's failure to provide the requested details, see Cajal Def. Support Co., B-242562.2; B-243520, June 12, 1991, 91-1 CPD ¶ 563; Patricia A. Geringer, B-247562, June 11, 1992, 92-1 CPD ¶ 511, and the agency could reasonably interpret Whittaker's lack of specific details regarding the modifications necessary to provide a conforming testhead as indicating that its proposal did not contemplate the modification of a COTS testhead as envisioned by the RFP; and that therefore considerable risk existed that Whittaker may not be able to timely furnish a conforming testhead. See IPEC Advanced Sys., supra (where RFP requests specific technical information and the proposal provides blanket statement of compliance, but not the specific information requested, the agency may consider the proposal technically deficient).

Whittaker's BAFO also confirms the agency's concerns about its testhead. For example, in explaining its Class II OCD nonconformities, Whittaker stated that its testhead is "primarily comprised of . . . COTS items, integrated together to meet the enclosure requirements of the [PD]" and:

"The PD also imposes certain requirements that have been found inconsistent with some of the COTS selected for the [Whittaker] implementation. These are all minor variations that will be corrected through modification of the equipments by the suppliers, or implemented by [Whittaker] and will comply fully with the requirements of the PD . . ."

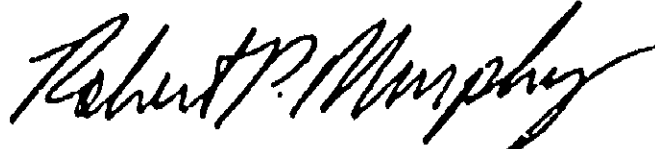
Also, in "explaining" why one testhead component could not pass Class II OCD testing, Whittaker briefly described the component, and advised the agency that (1) the component was "presently developed" by another firm for use on that firm's equipment, (2) the component would not be available for the OCD, (3) the component "is not yet integrated into the testhead," and (4) "full descriptions for this device will be provided and personnel will be available to discuss its configuration and attributes during the OCD." This also indicates that Whittaker's proposed testhead was more of a developmental effort than a modification of a COTS testhead.

The solicitation made it clear that an offeror's ability to provide a COTS testhead was at the heart of the technical evaluation. In this regard, we note that the RFP's OCD test requirements clearly elicit information to be used in assessing the characteristics of modified COTS testheads; hence the solicitation requirement that offerors explain with specificity modifications that need to be made to the testhead that are necessary to pass the Class II OCD. Also, five of the six equally valued evaluation factors assess various aspects of the offerors' technical responses to the statement of work's and PD's requirements for a COTS testhead.

In sum, the agency was reasonably concerned that Whittaker's failure to provide the requested details evidenced its probable inability to furnish the required equipment within the required timeframes. The agency therefore had a reasonable basis for finding Whittaker's proposal unacceptable and eliminating it from the competition.

While Whittaker appears to dispute that discussions were meaningful in that it claims surprise at the reasons it was found unacceptable, we think the record confirms that the agency's efforts to elicit information concerning the COTS attributes of Whittaker's testhead adequately apprised Whittaker of the critical deficiencies in its technical approach and the likely consequences of its withholding, or being unable to furnish, the requested information. In this regard, the agency stressed its need for the requested information by seeking it on more than one occasion. Whittaker's assertion that the agency should have once again conducted discussions on the points that the agency found its proposal unacceptable has no merit. An agency is not required after evaluating BAFOs and determining a proposal to be unacceptable to notify the unacceptable offeror of remaining or newly discovered deficiencies. IPEC Advanced Sys., supra; see also CompuServ Data Sys., Inc., 60 Comp. Gen. 468 (1981), 81-1 CPD ¶ 374.

The protest is denied.


for James F. Hinchman
General Counsel